

In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.2632 of 2006.

Date of decision:27.4.2007.

Tejinder Pal Grover and others.

...Petitioners.

Versus

Murari Lal Gupta.

...Respondent.

...

Coram: Hon'ble Mr. Justice S .N. Aggarwal.

...

Present: Mr.Sumeet Mahajan Senior Advocate with Mr.Amandeep Singh Advocate for the petitioners.

Mr.Surinder Garg Advocate for the respondent.

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Judgment.

S. N. Aggarwal, J.

The petitioners and Murari Lal Gupta, respondent had constituted a partnership firm under the name and style of M/s. Jai Mata Sanitary and Hardware Store, Samrala Road, Ludhiana by executing partnership deed dated 8.7.1995. The business became operative with effect from 1.7.1995. A fresh partnership deed was executed on 1.4.1997 which contained arbitration clause. Again a partnership deed was executed on 1.4.2000.

The respondent filed a civil suit on 21.8.2003 against the

petitioners for dissolution of partnership firm and for rendition of accounts. In the said civil suit, the petitioners filed an application under Section 8 of the Indian Arbitration and Conciliation Act (in short the Act of 1996) in which it was pleaded that on 31.3.2002, differences had arisen between the partners and the respondent had retired from the partnership with effect from 31.3.2002 and the accounts were settled. It was further pleaded that in view of arbitration clause No.11 in the partnership deed, the matter was referable to the Arbitrator.

The said application was opposed by the respondent.

The learned trial Court dismissed the said application vide impugned order dated 54.2002.

Hence, the present petition.

The submission of learned counsel for the petitioners was that since there was arbitration clause between the parties, which was part of partnership deed dated 1.4.1997, therefore, the matter was referable to the Arbitrator. Reliance was placed on the judgments of the Hon'ble Supreme Court reported as **V.H.Patel & Company and others Versus Hirubhai Himabhai Patel and others**, (2000) 4 Supreme Court Cases 368 and **Hindustan Petroleum Corpn. Ltd. Versus Pinkcity Midway Petroleums**, (2003) 6 Supreme Court Cases 503.

On the other hand, the submission of learned counsel for the respondent was that since as per version of the petitioners themselves, the partnership has ceased to exist with effect from 31.3.2002, the arbitration clause no longer survived and, therefore, there is no dispute between the partners which can be referred to the Arbitrator. It was further submitted that there is no illegality in the impugned order dated 5.4.2006 passed by the

learned trial Court.

Submissions have been considered.

It would be worth-while to reproduce the arbitration clause No.11 which was a part of partnership deed dated 1.4.1997. It reads as under:-

“That in case of any dispute arising amongst the partners or their representatives or nominees, the same shall be decided by Arbitration under the provision of Indian Arbitration Act, as amended upto date.”

Even in the impugned order dated 5.4.2006, the learned Additional Civil Judge (Senior Division), Ludhiana has held that at the time of constituting and amending this partnership, the parties consciously resolved not to take their disputes to the Court and they mutually agreed to get their disputes decided through the arbitration under the Act. The trial Court also held after deeper consideration that the Arbitrator can validly go into the question of dissolution of a partnership firm. The application filed by the petitioners was dismissed on the sole ground that once as per version of the petitioners, the partnership firm stand dissolved and re-constituted, there remains nothing to be referred to the Arbitrator.

The version of the respondent in the civil suit filed by him against the petitioners was that he was a partner in the partnership firm which was running the business under the name and style of M/s. Jai Mata Sanitary and Hardware Store, Samrala Road, Ludhiana for which partnership deed was entered into between them on 8.7.1995 and thereafter it was executed on 1.4.1997. The petitioners' version is that another partnership deed was executed on 1.4.2000. Its execution has not been

denied by the respondent although he alleges that it was for a limited purpose. The fact remains that the respondent claimed to be the partner in the firm on the basis of partnership deed dated 1.4.1997 and sought its dissolution as also rendition of accounts. It was denied by the petitioners who alleged that the respondent had retired on 31.3.2002 and the accounts were settled. The firm was re-constituted. Therefore, there is a dispute between the parties, whether the respondent has retired with effect from 31.3.2002 or whether the accounts were settled or whether the firm is liable to be dissolved and the petitioners are liable for rendition of accounts. The dispute is there between the parties and as per clause 11 of the partnership deed dated 1.4.1997, whenever there is any dispute amongst the partners, the same shall be decided by the Arbitrator under the provisions of India Arbitration Act or for that matter under the Act of 1996. It was held by the Hon'ble Supreme Court in **V.H.Patel's** case (supra) as under:-

“In the suit filed before the Court it is no doubt true that one party, Respondent 1, was seeking to establish that he had not retired from the partnership and, therefore, there is justification in the criticism levelled by the learned counsel for the petitioner that the prayer for dissolution of the firm is inconsistent with such a claim. But that is not the end of the matter. Even if he had not retired pursuant to the terms of the agreement entered into between the parties, it is certainly permissible for him when disputes had arisen between the parties to ask for dissolution of the partnership and when that was not possible by mutual consent a dispute could certainly arise thereto and such a dispute could have been referred to arbitration as

provided in clause 11 of the partnership deed. If that was permissible, such a contention could be raised in the suit filed by the parties. Merely because the disputes between the parties have been referred to arbitration, he is not prevented from raising such a question nor is the arbitrator prevented from deciding such a matter. Therefore, agreeing with the view expressed by the High Court, we reject the contention raised on behalf of the petitioner that it was not permissible for the arbitrator to enter upon the question of dissolution of the partnership. Though the disputes between the parties originated on the basis whether one or the other partner had not retired from partnership or as to the rights arising in relation to trademarks or otherwise, still when there is no mutual trust between the parties and the relationship became so strained that it is impossible to carry on the business as partners, it was certainly open to them to claim dissolution and such a question could be adjudicated. The scope of reference cannot be understood on the actual wording used in the course of the order made by this Court or the memorandum concerned filed before this Court, but it should be looked from the angle as to what was the spirit behind the reference to the arbitration. The idea was to settle all the disputes between the parties and not to confine the same to any one or the other issue arising thereunder. In that view of the matter, the contention addressed to the contrary is untenable.”

In view of the facts of this case and the law on the subject, the

dispute between the parties is liable to be referred to the Arbitrator. Accordingly, the impugned order dated 5.4.2006 is set aside and the learned trial Court is directed to appoint the Arbitrator in accordance with the arbitration clause read with Section 8 of the Act of 1996.

This Civil Revision is disposed of in the above terms.

April 27 ,2007.
Jaggi

(S. N. Aggarwal)
Judge